

**(2010) 04 KL CK 0063**

**High Court Of Kerala**

**Case No:** WA. No. 1934 of 2009

A.K. Gopalan

APPELLANT

Vs

Union of India (UOI) and Cochin  
Port Trust

RESPONDENT

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**Date of Decision:** April 8, 2010

**Hon'ble Judges:** P.N.Ravindran, J; K. Balakrishnan Nair, J

**Bench:** Division Bench

**Advocate:** S. Karthika, for the Appellant; P. Parameswaran Nair, Asst. Solicitor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

P.N. Ravindran, J.

The appellant in this writ appeal is the petitioner in W.P.(C) No. 37917 of 2007 and the respondents are the respondents therein. By judgment delivered on 21.5.2009, the learned single Judge dismissed the writ petition. Though the appellant filed R.P. No. 625 of 2009 seeking a review of the judgment dismissing the writ petition, the review petition was dismissed by order passed on 8.7.2009. Aggrieved thereby, the appellant has preferred this writ appeal. The brief facts of the case are as follows:

2. The appellant retired from service while he was working as Deputy Wharf Superintendent in the Cochin Port Trust on 30.6.1985, on attaining the age of superannuation. At that point of time, he was drawing a basic pay of Rs. 1,529/-. He was also paid various other allowances and his aggregate pay was Rs. 1990/-. After retirement, by Ext.P2 order dated 29.6.1985, the appellant was sanctioned superannuation pension of Rs. 737/- per mensem with effect from 1.7.1985 and Death-cum-Retirement Gratuity of Rs. 25,228.50. He was also given Rs. 350/- as dearness relief on pension. Thus, the total pension that he was receiving was Rs. 1,087/- per mensem. Consequent on the decision taken by the Government of India to take into account Dearness Allowance and Dearness Pay for the purpose of determining the pensionary benefits, by Ext.P3 order dated 13.6.1987, the

appellant's pension was revised to Rs. 920/- per mensem with effect from 1.6.1985 and the Death- cum-Retirement Gratuity was revised as Rs. 32,835/-.

3. Long after he retired from service, the appellant raised a dispute about the fixation of pension. He contended that his pension should have been fixed by treating his last drawn pay as Rs. 1756/- instead of Rs. 1529/-. According to the appellant, the Dearness Allowance of Rs. 227/- drawn by him in the last month of service ought to have been included in the basic pay and his pension should have been worked out on the basis that his last drawn pay was Rs. 1756/-. He contended that had his pension been determined on that basis, he would have been entitled to draw Rs. 829/- as pension instead of Rs. 737/- which was fixed as monthly pension by treating his last drawn pay as Rs. 1529/-. When the Government decided to include Dearness Allowance and Dearness Relief in the pay for the purpose of fixation of pension, his pension was revised by Ext.P3 order. For the purpose of such revision, his pay was fixed as Rs. 1975.15, consisting of Pay, Fixed DA, Special DA and Variable DA for the period from 8/1984 to 9/1984 and at Rs. 1990/-, consisting of Pay, Fixed DA, Special DA and Variable DA for the period from 10/1984 to 5/1985. His average pay was fixed as Rs. 1987.03 and his pension was determined as Rs. 945/- including the Dearness Relief on pension. The difference in pension, which stood reduced by Rs. 142/- as a result thereof, was protected as personal pension.

4. Aggrieved by the apparent reduction in pension, the appellant moved the respondents. He thereafter filed O.P. No. 9264 of 2003 in this Court. By Ext.P7 judgment delivered on 16.2.1004, this Court disposed of the said original petition with a direction to the respondents to examine the appellant's grievance and take a decision in the matter within two months from the date of receipt of a copy of the judgment, after affording the appellant a reasonable opportunity of being heard. The appellant thereafter submitted a representation setting out his grievances and claims. By Ext.P8, the Financial Adviser and Chief Accounts Officer, Cochin Port Trust held that there is no merit in the appellant's claim. The appellant thereupon filed W.P.(C) No. 2746 of 2005 in this Court. By judgment delivered on 19.6.2006 this Court directed the second respondent to re-consider the case of the appellant. The appellant, however, filed W.A. No. 2185 of 2006 in this Court challenging the said judgment. Though Ext.P8 order had not been specifically challenged in the writ petition, the Division Bench permitted the appellant to move the first respondent Union of India seeking redressal of his grievances. The appellant, thereupon moved the Government of India. The Government of India considered his grievances and passed Ext.P10 order holding that his pension has been properly fixed. The appellant thereupon filed W.P.(C) No. 37917 of 2007 in this Court. The respondents resisted the writ petition. By judgment delivered on 21.5.2009 the learned single Judge dismissed the writ petition. Though a review was attempted, the review petition was dismissed by order passed on 8.7.2009. Hence, this writ appeal.

5. We heard Smt. K.P. Geethamani, learned Counsel appearing for the appellant, Sri. T.P.M. Ibrahim Khan, learned Assistant Solicitor General appearing for the first respondent and Sri. P. Gopinath Menon, learned Counsel appearing for the second respondent. We have considered the submissions made at the Bar by the learned Counsel appearing on either side and have also gone through the pleadings and the materials on record including Ext.P10 order which is impugned in the writ petition. The learned single Judge dismissed the writ petition holding that the appellant has been paid Dearness Relief on the basis of the formula applicable to him and that the appellant's claim is unfounded. It was held that Ext.P10 order passed by the Government does not suffer from any infirmity. In Ext.P10 order the Government have set out in detail, the principle adopted while fixing the appellant's pension, prior to the issuance of the Government order dated 16.1.1986 and also thereafter. A reading of Ext.P10 indicates that the appellant's pension was fixed as per Ext.P2 order dated 29.6.1985, taking the basic pay as Rs. 1,529/-. His pension was fixed at Rs. 737/-. He was also given Dearness Relief of Rs. 350/-. Thus, the total pension that he was receiving immediately after his retirement was Rs. 1087/- per mensem. At that point of time, the Consumer Price Index point was 588. The appellant was given Dearness Relief on pension calculated on that basis. Later, the Government of India issued order dated 16.1.1986 prescribing the manner in which pay of Class III & IV employees who retired on or after 31.3.1985 has to be fixed. Complying with that order, the last drawn pay of the appellant was re-fixed by including Fixed DA, Special DA and Variable DA at Rs. 1987/-. His pension was accordingly fixed at Rs. 945/- including Dearness Relief. Since there was a drop in the pension, the difference was protected as personal pension. The appellant's grievance is that as a result of inclusion of Fixed DA, Special DA and Variable DA in his pay, he really suffered a reduction in pension. He contended that Dearness Relief on pension was granted to him at 250 points in the Commercial Price Index and Dearness Relief beyond the said point was withdrawn. The Government have, after adverting to the various contentions raised by the appellant, held as follows in Ext.P10:

6. CoPT implemented the above benefit as coming from the Ministry's order dated 1.1.1986 by merging with the pay, the special DA, the fixed DA and the Variable DA as admissible on 1.7.1985. It may be noted that on the date of retirement, i.e., 1.7.1985, the corresponding CPI point was 588 and Shri. Gopalan was also granted DR beyond 568 points up to 588 points (Rs. 25, i.e., 5% for every 20 point increase in CPI points). After the above revision, it was found that there is a fall in total pension to the extent of Rs. 142/- and the same was compensated by grant of personal pension in terms of Govt. order dated 16.1.86. Thus, it is seen that CoPT correctly implemented the Government Order dated 16.1.1986 and extended the benefit of DR due to Shri. Gopalan in re-fixing his pension as due on 1.7.1985.

7. Shri. Gopalan has referred to Swamy's Compilation of Pension Revision Manual and Updating of Pre 1986 Pensions (Fifth Pay Commission) (P-5) relating to DR as extended to Central Government employees for the period from 1.4.1985 to

31.12.1985. According to him, CPI points beyond 100 (1960) up to 607 points till 1.1.1986 in terms of Government Order No. A- 38011/23/94-PE-I dated 30.6.1995 and that the percentage of DR according to P-5 and P-8 from 1.4.1985 to 1.1.1986 at the rates 117% to 127% and in the CPI points from 1.4.1985 till 1.1.1986 is the same. It is found that the Port employees are governed by Industrial DA and not Central DA and hence the Swamy's Manual (P-5) quoted by Shri.Gopalan is not applicable.

8. Shri. Gopalan has referred to Government Order No. A-38011/7/87-PE-I dated 28.12.1990 (P-9) and has alleged that DR has been sanctioned by the Government beyond CPI point 250 as on 1.4.1985. Accordingly, pension had been granted to him at CPI 250 points and DR beyond CPI 250 points but it was withdrawn. It is seen that the Order dated 28.12.1990 relates to clarifications on various points sought by Kolkata Port Trust, etc. on matter of DR. In this letter, the Government had clarified that the existing pattern of grant of periodical relief on pension would continue for Class-III & IV employees who retired prior to 1.1.1988. The computation of pension has been done by CoPT accordingly and is shown in para 3, Later on the pension arrived at vide para 3 has been protected.

9. Shri. Gopalan has referred to clarifications in this matter given by IPA in their letter No. IPA/MD/Pension/2005 (Vol. IV) dated 28.9.05 and has challenged the advice of IPA. It is observed that IPA in their aforesaid letter stated that in terms of Ministry's letter dated 16.1.86 (P-9) DA (including fixed DA and Special DA, wherever applicable) upto CPI 568 points (1960=100) has been treated as DP and counted as emoluments for pension in case of employees who retired on or after 31.3.85 and opted for Central Govt. definition of pay for purpose of pension. Shri. Gopalan retired on 30.6.85 and opted for Central Govt. definition of pay and accordingly DA drawn upto 568 points (1960 = 100) had been treated as DP counted for the purpose of arriving at the average emoluments for purpose of pension. Thereafter he was entitled to DR beyond 568 points, therefore for consolidation of his pension w.e.f. 1.1.86, COPT had taken DR beyond 568 points up to 607 points. According to IPA, this action of COPT is in order. Further, IPA has observed that if the claim of Shri. Gopalan for taking into account DR for Index points beyond 250 up to 568 points is considered for purpose of consolidation w.e.f. 1.1.86, even after merger of DA up to 568 points as DP with pay for calculation of pension, it may amount to giving double benefit and is therefore not seemingly justified. As regards loss in pension, pension equal to the loss amount was granted to him by COPT from the date of revised pension. The point raised by Shri.Gopalan and clarification given by IPA was looked into and it is found that the observation made by IPA is correct. This would be evident from the following table:

Date of effect	Merging of CPI points	Remarks
1.1.1974	250	Wage Settlement effective from 1.1.74

1.1.1980	383	
1.1.1984	455	(Wage Settlement effective from 1.1.84)
1.7.1985	568	(Date of pension calculation on retirement)
1.1.1986	607	(Revision of pension on Govt. order dated 30.6.95)

6. Ext.P10, in our opinion, is a complete answer to the grievance voiced by the appellant. The appellant has not in our opinion suffered any reduction in pension. The pension that was fixed initially as per Ext.P2 was protected when Ext.P3 revised pension order was issued, by treating the difference in pension which stood reduced, as personal pension. Ext.P10 discloses that on the date of the appellant's retirement, that is on 1.7.1985, the corresponding Consumer Price Index point was 588 and that he was granted Dearness Relief beyond 568 points up to 588 points, when Ext.P3 order was passed and that as there was a reduction in the pension, it was compensated by the grant of personal pension in terms of the order of the Government of India dated 16.1.1986. The Government have also held that if the claim of the appellant for taking into account Dearness Relief for index points beyond 250 points up to 568 points is considered, even after merger of DA up to 568 points as Dearness Pay, for the calculation of pension, it will amount to giving him an unjust benefit. In our opinion, the stand taken by the Government of India in Ext.P10 cannot be said to be arbitrary or illegal. The reduction in pension that occurred as a result of implementation of the Government order dated 16.1.1986 was compensated by giving the appellant personal pension which later merged with his regular pension on account of periodical increases in the Consumer Price Index points. We are therefore of the considered opinion that there is no merit in the challenge to Ext.P10. We are in agreement with the learned single Judge that no grounds have been made out warranting interference with Ext.P10.

For the reasons stated above, we hold that there is no merit in the writ appeal. The writ appeals fails and is accordingly dismissed. The parties shall bear their respective costs.